

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM A. MARLOW,
Plaintiff,

v.

SCOTT FRAKES,
Defendants.

Case No. C09-5455RJB

ORDER DENYING
PLAINTIFF'S REQUEST
FOR ARTICLE III JUDGE

This matter comes before the court on petitioner's request for an Article III judge. Dkt. 16. The court has considered the relevant pleadings and the remainder of the file herein.

On July 28, 2009, petitioner filed a petition for writ of habeas corpus. Dkt. 1. The case was referred to United States Magistrate Judge Karen L. Strombom, pursuant to 28 U.S.C. § 636(b). *See In Re: CONSENT REFERENCE TO U.S. MAGISTRATE JUDGES, PURSUANT TO 28 U.S.C. §636(c)*, Amended General Order, Section 3, United States District Court for the Western District of Washington, November 3, 2004.

After petitioner filed the petition for writ of habeas corpus, he was granted two extensions of time to provide service copies of the petition.

On November 17, 2009, petitioner filed a motion, requesting that the court provide a "Third Party Stamp," which apparently would enable another inmate to have petitioner's legal materials in the other inmate's cell for the purpose of assisting petitioner with this case; and grant petitioner a 180 day extension of time to file a brief in support of his habeas petition. Dkt. 10.

1 On December 2, 2009, Judge Strombom issued an order, concluding that the court lacked
2 jurisdiction to order the Department of Corrections to permit an inmate to have petitioner's legal materials
3 in that inmate's cell; denying petitioner's third motion for an extension of time; and directing petitioner as
4 follows:

5 Petitioner may proceed on his original petition or may file an amended petition and/or opening
6 brief. If Petitioner wishes to proceed on his original petition, he should so advise the court in
7 writing on or before December 18, 2009. If Petitioner desires to file an amended petition and/or
opening brief, he shall do so on or before December 18, 2009.

8 Dkt. 11, at 3-4.

9 On January 12, 2010, petitioner was granted another extension of time, until January 29, 2010, to
10 file his amended petition and/or opening brief. Dkt. 13.

11 On February 24, 2010, the court issued an Order to Show Cause that denied a further extension of
12 time, and that provided as follows:

13 The court's independent review indicates that Mr. Marlow appealed his 2005 judgment and
14 conviction for three counts of first degree child molestation to the Washington Court of Appeals.
15 *See, State v. Marlow*, 2006 WL 2475031 (Wash.App. Div. 2) (unpublished opinion). The
Washington Court of Appeals denied his appeal on August 29, 2006. *Id.* However, the court has
found no record of a subsequent appeal to the Washington Supreme Court.

16 Accordingly, the court shall not serve the petition nor grant additional extensions of time until Mr.
17 Marlow files by no later than March 15, 2010, an amended petition under 28 U.S.C. § 2241
showing that his grounds for federal relief have been properly exhausted in state court or show
cause why this matter should not be dismissed.

18 Dkt. 15, at 4.

19 On March 13, 2010, petitioner filed a response to the Order to Show Cause. Dkt. 16. Included in
20 that response was a request that this case be considered by a United States District Judge, not a United
21 States Magistrate Judge. Dkt. 16, at 4.

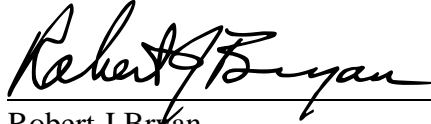
22 This case is assigned to the undersigned United States District Judge. The case was referred to the
23 magistrate judge, pursuant to 28 U.S.C. § 636(b). The Federal Magistrates Act authorizes the district
24 court to refer the case to the magistrate judge. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1118
25 (9th Cir.2003). Any order of the magistrate judge may be reviewed by a district judge if a petitioner
26 follows the proper procedures. *See* 28 U.S.C. § 636 and Fed.R.Civ.P. 72. Petitioner's disagreement with
27 the decisions of a magistrate judge does not constitute good cause for vacating a referral to the magistrate
28 judge. Petitioner's request for an Article III judge should be denied.

1 Therefore, it is hereby

2 **ORDERED** that petitioner's request for an Article III judge (Dkt.16) is **DENIED**. This case is
3 **RE-REFERRED** to the magistrate judge for further proceedings.

4 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any
5 party appearing *pro se* at said party's last known address.

6 DATED this 26th day of March, 2010.

7 
8 Robert J Bryan
9 United States District Judge